

CHAPTER 10

DELIVERY OF PERSONNEL

Whether you are assigned to a small legal office or to a larger naval legal service office (NLSO) or NLSO detachment, you will probably become involved with the preparation of various documents associated with the delivery of personnel and waiver of extradition. This chapter is designed to provide you with background information associated with the delivery of personnel, waivers of extradition, and service of process and subpoenas.

DELIVERY

There are varying circumstances you must consider when you receive a request for delivery of a member. Questions can arise on matters of jurisdiction, extradition, and agreements that must be executed. The following discussion of these circumstances is provided to give you an understanding of the factors involved.

PERSONS REQUESTED BY STATE AUTHORITIES IN CRIMINAL CASES

The first part of this chapter deals with requests by state authorities for the surrender of service members or civilians according to arrest warrants or similar process. This is commonly done in connection with a criminal prosecution. Responding to such requests by a state for delivery of service members or civilian employees involves balancing the federal interests in preserving sovereign immunity and the productivity, peace, good order, and discipline of the installation against the right of the state to exercise its jurisdiction. Additionally, by regulation, Navy and Marine Corps authorities are limited in the extent to which they can directly assist such an act. Commands should respond to such requests by using the minimum authority necessary to preserve federal interests without unduly restricting state jurisdiction.

WITHIN TERRITORIAL LIMITS OF REQUESTING STATE

When the delivery of any person in the Navy or Marine Corps is requested by local and state civil authorities of a state, territory, or commonwealth for

an alleged offense punishable under the laws of that jurisdiction, and such person is located at a Navy or Marine Corps installation within the requesting jurisdiction, or aboard a ship within the territorial waters of such jurisdiction, commanding officers (COs) are authorized to and normally will deliver such person when a proper warrant is issued. In the case of a service member, delivery can only be carried out after compliance with the *Manual of the Judge Advocate General* (JAGMAN) subject to the exceptions noted in the JAGMAN. You should consult a judge advocate of the Navy or Marine Corps before delivery is carried out if a judge advocate is reasonably available.

The previous rule applies equally to civilian employees and civilian contractors and their employees when located on a Navy or Marine Corps installation. Commands should normally not become actively involved in civilian law enforcement. When a command has determined that a person is to be delivered in response to a valid warrant, you should consider the following guidance. If the person to be delivered is a military member, the member may be ordered to report to the location designated by the CO and surrender to civil authorities under Article 14, *Uniform Code of Military Justice* (UCMJ). If the person to be delivered is a civilian, the person may be invited to report to the designated space for delivery. If the civilian refuses, the civilian authorities may be escorted to a place where the civilian is located so delivery may be performed. A civilian who works in a classified area can be directed to leave his or her immediate work area to avoid any compromise of classified material. When it is required to have civilian law enforcement personnel go to the work center of an individual, it should be done with minimum interference to good order and discipline.

BEYOND TERRITORIAL LIMITS OF REQUESTING STATE

When the delivery of any person in the Navy or Marine Corps is requested by state, territory, or commonwealth civil authorities for an alleged crime or offense punishable by the laws of the jurisdiction making the request, and the person is not attached to a Navy or Marine Corps activity within the requesting

state territory, or commonwealth, or a ship within the territorial waters thereof, take the following action. Deliver the person for the purpose of making that person amenable to prosecution. The delivery must be approved by any officer exercising general court-martial jurisdiction (OEGCMJ), or by an officer designated by him or her, or by any CO. The OEGCMJ or CO must consult with judge advocate of the Navy or Marine Corps before authorizing delivery. Before delivery, the OEGCMJ or CO must follow the provisions of the JAGMAN subject to any exceptions that are discussed later in this chapter.

The member may be delivered upon formal or informal waiver of extradition, or upon presentation of a fugitive warrant. Both of these procedures are discussed later in this chapter.

The previous rule applies equally to civilian employees when located on a Department of the Navy (DON) installation not within the requesting state.

Waiver of Extradition

Any person may waive formal extradition. A waiver must be in writing and witnessed. The waiver must include a statement that the person signing it has received counsel of either a military or civilian attorney before executing the waiver. The waiver must further state the name and address of the attorney consulted. The form used for the waiver should be substantially as shown in figure 10-1. Mail all executed copies of the waiver to the Judge Advocate General (JAG) immediately after their execution.

In every case where there is doubt about the voluntary nature of a waiver, such doubt is resolved against its use. All persons concerned must be advised to comply with the procedures set forth for fugitive warrants.

When an individual declines to waive extradition. You need to inform the nearest NLSO or Marine Corps staff judge advocate (SJA) since further representations to the civil authorities may be needed. Do not allow the transfer of the individual concerned out of the state in which he or she is then located without the permission of the Secretary of the Navy (SECNAV) (JAG), unless you have obtained a fugitive warrant.

Fugitive Warrants

A fugitive warrant, as defined in this chapter, is a warrant issued by a state court of competent

jurisdiction for the arrest of an individual. Normally, a state requesting delivery of a member from another state will issue a fugitive warrant to the state where the member is then located.

Upon issuance of a fugitive warrant by the requesting state to the state where the member is located, the latter state will normally request delivery of the member to local state authorities. Delivery to local state officials should be arranged by authorized Navy or Marine Corps officers subject to the conditions set forth in the JAGMAN and the following discussion.

Upon receipt of a request for delivery of a member under fugitive warrant to state authorities, if the member voluntarily waives extradition, the provisions for the waiver of extradition apply. If the member is delivered to local authorities but refuses to waive extradition, he or she will have the opportunity to contest extradition in the courts of the state in which he or she is then located.

No delivery of a member by Navy or Marine Corps officers pursuant to a fugitive warrant or waiver of extradition can be done without the completion and execution of the delivery agreement required by the JAGMAN. The agreement is executed when (1) the authorities of both the requesting state and the state in which the member is located have signed it or (2) the authorities of the state in which the member is located have signed the agreement. This provision applies only if such authorities, on behalf of the requesting state, accept full responsibility for returning the member to a command designated by the DON.

PERSONNEL STATIONED OUTSIDE THE UNITED STATES

Persons desired by local U.S. authorities—when delivery of any member of the Navy or Marine Corps, or any civilian employee or dependent, is desired for trial by state, territory, commonwealth, or local civil authorities and the individual whose presence is sought is stationed outside the United States, follow the provision of Department of Defense (DOD) Directive 5525.9 of 27 December 1988, Compliance of DOD Members, Employees, and Family Members Outside the United States with Court Orders, as implemented in SECNAVINST 5820.9. In all such cases, you should consult with the nearest judge advocate of the Navy or Marine Corps before any action is taken.

Members desired by U.S. federal authorities—when the delivery of any member of the Navy or

WAIVER OF EXTRADITION

"I, _____, United
States Navy (United States Marine Corps), having been advised of
my rights to formal extradition as provided for in section 0604
JAG Manual by _____
(name of military or civilian attorney)
of _____,
(address of attorney)
waive such rights and agree to accompany _____,
a representative of the State of _____,
into the territorial limits of said State. I have been advised that
the crime which I am charged to have committed in the State of
_____ is as follows:

(Signature)

WITNESSES:

(Signature of witness)

Figure 10-1.—Waiver of extradition.

Marine Corps is desired for trial in federal district court, upon proper representation by the Department of Justice to the SECNAV (JAG), return the member to the United States. This transfer is at the expense of the DON. The member will be held at a military facility convenient to the DON and to the Department of Justice. Delivery may be done as set forth in JAGMAN, section 0608, subject to the exceptions in JAGMAN, section 0610.

DELIVERY AGREEMENTS

In each case where a member is to be delivered to civil authorities for trial, you need to be familiar with the procedures involved in delivering that person to state, federal, or foreign authorities. You also need to be familiar with the circumstances under which delivery may be refused. Let us now look at these procedures in more detail.

DELIVERY TO STATE AUTHORITIES

When delivery of any member of the Navy or Marine Corps to the civilian authorities of a state is authorized, the member's CO must, before making delivery, obtain from the governor or other authorized officer of the state a written agreement that conforms to the agreement shown in figure 10-2.

The state official completing the agreement must show that he or she is authorized to bind the state to the terms of the agreement. When indicating in the agreement the Navy or Marine Corps activity to which the member delivered is to be returned by the state, be careful to designate the closest activity (to the command that the member is attached) that has special court-martial jurisdiction.

The DON considers this agreement complied with when (1) the member is furnished transportation (under escort in case of delivery under JAGMAN, section 0613) to a Navy or Marine Corps activity as stated in the agreement; (2) the member is provided cash to cover incidental expenses en route; and (3) the DON is so informed. Any departure from the agreement must have prior approval from JAG. As soon as possible, send a copy of the delivery agreement to JAG.

When personnel are delivered under the Interstate Agreement on Detainers Act, special forms that are not contained in the JAGMAN are used. The Detainers Act is infrequently used and most requests for delivery are pursuant to Article 14, UCMJ. See the JAGMAN for a detailed discussion of the Interstate

Agreement on Detainers Act and Title 18, *U.S. Code*, for the special forms required.

DELIVERY OF PERSONNEL TO FEDERAL AUTHORITIES

When federal law enforcement authorities display proper credentials and federal warrants for the arrest of service members, civilian employees, civilian contractors and their employees, or dependents residing at or located on a DON installation, CO's are authorized to and should allow the arrest of the individual sought. The exceptions in the JAGMAN may be applied to service members. You should consult with a judge advocate of the Navy or Marine Corps before the delivery is carried out.

The agreement shown in figure 10-2 is not a condition precedent to the delivery of service members to federal law enforcement authorities. Regardless of whether the member is convicted or acquitted, the member will be returned to the naval service (provided naval authorities desire his or her return) and the necessary expenses will be paid from an appropriation under the control of the Department of Justice.

DELIVERY OF PERSONNEL TO FOREIGN AUTHORITIES

Except when delivery is provided for by agreement between the United States and the foreign government concerned, COs are not authorized to deliver service members or civilian employees of the DON, or their dependents residing at or located on a Navy or Marine Corps installation, to foreign authorities. When a request for delivery of these persons is received in a country that the United States has no agreement with or when the CO is in doubt, advice should be sought from JAG. Detailed information on the delivery of service members, civilian employees, and dependents to foreign authorities when a status of forces agreement is in effect is contained in SECNAVINST 5820.9. In addition, units that are deployed overseas should check their *Deployment Manual* for specific guidance on delivery of personnel in the areas that the deployed unit will be visiting.

CIRCUMSTANCES IN WHICH DELIVERY IS REFUSED

There are situations in which delivery of personnel may be refused or that require specific approval by higher authorities before delivery may be done. Some

DELIVERY AGREEMENT

"In consideration of the delivery of _____,
(name of person delivered)

United States Navy (United States Marine Corps), to
_____, at _____,

for trial upon the charge of _____,

I hereby agree pursuant to the authority vested in me as

_____ that _____,
(name of person delivered)

United States Navy (United States Marine Corps) will be
transported to the State of _____ without expense
to him or her or to the United States and that the Commanding
Officer of the _____ will be notified
immediately of the outcome of the trial and that the said

_____ will be returned to
(name of person delivered)

_____, or to such place as the Secretary
of the Navy shall designate, or transportation issued thereto,
without expense to the United States or to the person delivered
immediately upon dismissal of the charges or completion of the
trial in the event he or she is acquitted, or immediately upon
satisfying the sentence of the court in the event he or she is
convicted and a sentence is imposed, or upon disposition of the
case, provided that the Department of the Navy shall then desire
his or her return."

Figure 10-2.—Delivery agreement.

of these situations and the procedures to follow when delivery is refused are discussed as follows.

Disciplinary Proceedings Pending

When disciplinary proceedings involving military offenses are pending, obtain legal guidance from a judge advocate of the Navy or Marine Corps before delivery of personnel to federal, state, territory, commonwealth, or local authorities if reasonably practical.

When Delivery May Be Refused

Delivery may be refused only in the following limited circumstances:

- Where the accused has been retained for prosecution for serious military offenses as defined in the JAGMAN
- When the CO considers that extraordinary circumstances exist that indicate delivery should be refused

REPORT REQUIRED WHEN DELIVERY IS REFUSED

In any case where it is intended that delivery will be refused, you must report the circumstances to JAG by telephone, or by message if telephone is impractical. The initial report is confirmed by letter setting forth a full statement of the facts. The letter should be as shown in figure 10-3. You also must send a copy of the report to the area coordinator.

MEMBERS RELEASED ON BAIL OR ON THEIR OWN RECOGNIZANCE

A member of the Navy or Marine Corps arrested by federal, state, or territory authorities and released on bail or on his or her own recognizance has a duty to return to his or her parent command. Accordingly, where a member of the Navy or Marine Corps is arrested by federal, state, or territory authorities and returns to his or her ship or station on bail or on his or her own recognizance, the CO after checking the facts, date of trial, and approximate length of time needed should grant liberty or leave to permit appearance for trial, unless this would have a serious negative impact on the command. If liberty or leave is not granted, a judge advocate of the Navy or Marine

Corps should immediately be requested to act as liaison with the court.

Nothing in this chapter is to be construed as permitting the member arrested and released to avoid the obligations of bond or of his or her recognizance by reason of his or her being in the military service.

REQUESTS TO INTERVIEW SERVICE MEMBERS OR CIVILIAN EMPLOYEES BY FEDERAL CIVILIAN INVESTIGATIVE AGENCIES

Requests by the Federal Bureau of Investigations, Naval Criminal Investigative Service, or other federal civilian investigative agencies to interview service members or civilian employees of the DON suspected or accused of crimes should be promptly honored. If there is any refusal of such a request, you must immediately report it to JAG, or the Office of General Counsel, as appropriate, by telephone, or by message if telephone is impractical.

REQUEST FOR DELIVERY OF A SERVICE MEMBER SERVING SENTENCE OF A COURT-MARTIAL

Authority to honor the requests for delivery of military personnel serving a sentence of court-martial is provided by Article 14, UCMJ (10 U.S.C. § 814). Although seldom used, additional authority and mandatory obligation to deliver such personnel are provided by the Interstate Agreement on Detainers Act (18 U.S.C. Appendix, Section 9) which applies to the federal agency holding the prisoner. The DON, as an agency of the federal government, must comply with the Detainers Act.

The Detainers Act is designed to avoid speedy trial issues and to aid in rehabilitation efforts by securing a greater degree of certainty about a prisoner's future. The act provides a way for the prisoner to be tried on charges pending before state courts, either at the prisoner's request or at the request of the state where the charges are pending. A report is required when delivery is refused.

Upon request under the Interstate Agreement on Detainers Act by either the prisoner or state authorities, the responsible Navy or Marine Corps SJA will communicate with the appropriate state officials and make sure the cognizant commanders act on all such requests.

From: Commanding Officer
To: Judge Advocate General

Subj: DELIVERY REFUSED TO _____
AUTHORITIES; CASE OF [RANK, FULL NAME, SOCIAL
SECURITY NUMBER, U.S. NAVY/MARINE CORPS (OR
RESERVE)]

Ref: (a) (Previous telephone call or message notification to JAG)
(b) JAGMAN, section 0610

Encl: (1) Copy of warrant of arrest for

1. As reported by reference (a), and in accordance with reference (b), report is made that upon presentation of a valid warrant of arrest charging violation of (crime charged), (name of accused) was refused **delivery** to (sheriff, etc., of county, state, etc.) on (date) because (explain extraordinary circumstances).

2. Enclosure (1) is forwarded for information.

By direction

copy to:
COMNAVMILPERSCOM/CMC (Code JAM-1)

Figure 10-3.—Letter required when delivery is refused.

STATE REQUESTS

State officials may request delivery of prisoners in military custody under Section 2, Article IV, of the Interstate Agreement on Detainers Act. Where a detainer has been lodged against the prisoner and the prisoner is serving a sentence (regardless of whether an appeal is in process), delivery is mandatory unless the request is disapproved by the Director of the Bureau of Prisons, Washington DC 20537, as the designee of the Attorney General for this purpose. There is no further delegation to military authority.

The prisoner should be informed that he or she may request the Director of the Bureau of Prisons within 30 days after such request is received to deny the request. Upon the expiration of such 30-day period or upon the Director of the Bureau of Prisons' denial of the prisoner's request, whichever occurs first, the prisoner is then delivered to the requesting authority.

PRISONER REQUESTS

The obligation to grant temporary custody under the Interstate Agreement on Detainers Act also applies to prisoners' requests to be delivered to state authority, Section 2, Article III(c), of the Detainers Act requires the custodial official to inform the prisoner of the existence of any detainer and of the prisoner's right to request disposition. The prisoner's request is directed to the custodial official who must send it to the appropriate prosecuting official and court, with a certificate of prisoner status.

ARTICLE 14, UCMJ

When a request for custody does not invoke the Interstate Agreement on Detainers Act, delivery of custody is governed by Article 14, UCMJ, and JAGMAN, sections 0603 through 0610. The request will be honored unless, in the exercise of discretion, there is an overriding reason for retaining the accused in military custody; for example, additional courts-martial are to be convened or the delivery would severely prejudice the prisoner's appellate rights.

Execution of the agreement discussed previously is a condition precedent to delivery to state authorities. It is not required before delivery to federal authorities. Unlike delivery under the Detainers Act, delivery of custody pursuant to Article 14, UCMJ, interrupts execution of the court-martial sentence.

The form shown in figure 10-3 with proper modification should be used in reporting refusal of delivery of prisoners.

REQUEST FOR DELIVERY OF PERSONNEL SERVING SENTENCE OF A STATE COURT

Ordinarily, personnel serving protracted sentences resulting from a state criminal conviction will be processed for administrative discharge by reason of misconduct. See the MILPERSMAN. It may, however, be in the best interest of the naval service to retain a member, charged with a serious offense subject to military jurisdiction, to try the member by court-martial. The vehicle available for obtaining temporary custody of incarcerated personnel for prosecution is a request to the state under the Interstate Agreement on Detainers Act.

Military authorities may use the Interstate Agreement on Detainers Act to obtain temporary custody of a member incarcerated in a state institution, pursuant to conviction by a state court and to resolve criminal charges against the member that are cognizable before a court-martial.

DETAINDER

If a command chooses to use the Detainers Act, the CO of the responsible NLSO must file a detainer with the warden, commissioner of corrections, or other state official having custody of the member. The detainer must identify the member with exactness, listing the military charges pending against the member, and requesting the command be notified in advance of any intention to release the member from confinement.

REQUEST FOR DELIVERY

As soon as possible after filing the detainer, the CO of the cognizant NLSO must prepare a written request for temporary custody of the incarcerated member addressed to the state official charged with administration of the state penal system. The request must designate the person(s) to whom the member is to be delivered and must be sent via the military judge to whom the member's case has been assigned. If the request is properly prepared, the military judge will approve, record, and send the request to the addressee official. The Detainers Act provides the state with a 30-day period after receipt of the request before the

request is to be honored. Within that period of time the governor of the state may disapprove the request, either on his or her own motion or upon the prisoner's request. If the governor disapproves the request, the requesting command should coordinate any further action with the Office of the Judge Advocate General (Litigation Division).

RESPONSIBILITIES

The responsible command must make sure the responsibilities of a receiving jurisdiction shown in Section 2, Article IV, of the Detainers Act, are discharged. In particular, the Detainers Act requires that the receiving state:

- begins the prisoner's trial within 120 days of the prisoner's arrival, unless the court for good cause shown during an Article 39(a) session grants a continuance that is necessary or reasonable to promote the ends of justice.
- holds the prisoner in a suitable jail or other facility regularly used for persons awaiting prosecution, except for the period during which the prisoner attends court or travels to or from any place that his or her presence may be required.
- returns the prisoner to the state at the earliest practical time, but not before the charges that underlie the request have been resolved (premature returning of the prisoner will result in the dismissal of the charges).
- pays all costs of transporting, caring for, keeping, and returning the prisoner to the state, unless the command and the state should otherwise agree on some other allocation of the costs or responsibilities.

SERVICE OF PROCESS AND SUBPOENAS UPON PERSONNEL

Afloat and ashore COs may permit service of process of federal or state courts upon service members, civilian employees, dependents, or contractors residing at or located on a naval installation, if located within their commands. Service is not to be made within the command without the CO's consent. The intent of this provision is to protect against interference with mission accomplishment and to preserve good order and discipline, while not unnecessarily impeding the court's work.

SERVICE OF PROCESS

Service of process is generally defined as establishing the court's jurisdiction over a person by the handing of a court order to a person advising him or her of the subject of the litigation and ordering this person to appear or answer the plaintiff's allegations within a specified period or else be in default. When properly served, the process will make this person subject to the jurisdiction of a civil court.

Overseas

A service member's amenability to service of process issued by a foreign court depends on international agreements (such as the North Atlantic Treaty Organization Status of Forces Agreement [NATO SOFA]). Where there is no agreement, guidance should be sought from a local judge advocate or OJAG.

Within the United States

Within the jurisdiction. Where the member is within the jurisdiction of the court issuing the process, the CO will permit the service except in unusual cases where he or she concludes that compliance with the mandate of the process would seriously prejudice the public interest. Personnel serving on a vessel within the territorial waters of a state are considered within the jurisdiction of that state for the purpose of service of process. Process should not be allowed within the confines of the command until permission of the CO first has been obtained. Where practical, the CO should require that process be served in his or her presence or in the presence of an officer designated by the CO. COs are required to make sure the nature of the process is explained to the member. This can be done by a legal assistance officer.

Beyond the jurisdiction. Where the member is beyond the jurisdiction of the court issuing the process, COs should permit the service under the same conditions as within the jurisdiction, but need to make sure the member is advised that he or she need not indicate acceptance of service. Furthermore, in most cases, the CO should advise the person concerned to seek legal counsel. When a CO has been forwarded process with the request that it be delivered to a person within the command, it may be delivered if the service member voluntarily agrees to accept it. When the service member does not voluntarily accept the

service, it should be returned with a notation that the named person has refused to accept it.

Arising from official duties. Whenever a service member or civilian employee is served with federal or state court civil or criminal process arising from activities performed in the course of official duties, the CO should be notified and provided copies of the process and pleadings. After the pertinent facts are learned, notify JAG (Code 14) immediately by telephone and send the pleadings and process to the office.

A military member may remove civil or criminal prosecutions from state to federal court when the action is done under color of office or when authority is claimed under a law of the United States respecting the armed forces. The purpose of this action is to assure a federal forum for cases when service members must raise defense arising out of their official duties.

If a federal employee is sued in his or her individual capacity, that employee may be represented by Justice Department attorneys in state criminal proceedings and in civil and congressional proceedings. When an employee believes he or she is entitled to representation, a request—together with pleadings and process—must be submitted to JAG via the individual's CO. The CO will endorse the request and submit all pertinent data as to whether the employee was acting within the scope of employment at the time of the incident out of which the suit arose. If the Justice Department determines that the employee's actions reasonably appear to have been performed within the scope of employment and that representation is in the interest of the United States, representation will be provided.

Service Not Allowed

In any case where the CO refuses to allow service or process, a report is made to SECNAV (JAG) as expeditiously as the circumstances allow or warrant.

Leave/Liberty

In those cases where personnel either are served with process or voluntarily accept service of process, leave or liberty should be granted to comply with the process, unless it will prejudice the best interests of the naval service.

SUBPOENAS

A subpoena is a court order requiring a person to testify in either a civil or criminal case as a witness. The same considerations exist in this instance as apply in the case of service of process, except for special rules where testimony is required on behalf of the United States in criminal and civil actions, or where the witness is a prisoner.

Witness on Behalf of the Federal Government

Where DON interests are involved and departmental personnel are required to testify for the Navy, the Chief of Naval Personnel or Commandant, Marine Corps directs the witness' activity to issue TAD orders. Costs of such orders are borne by that same command. If DON interests are not involved, the Navy is reimbursed by the concerned federal agency.

Witness on Behalf of Accused in Federal Court

When naval personnel are served with a subpoena and the appropriate fees and mileage are tendered, issue no-cost permissive orders unless the public interest would be seriously prejudiced by the member's absence from the command.

Witness on Behalf of Party to Civil Action or State Criminal Action With No Federal Government Interest

The CO normally grants leave or liberty to the person, provided such absence will not prejudice the best interests of the naval service. If the member is being called as a witness for a nongovernmental party only because of performance of official duties, the CO is authorized to issue the member permissive orders at no expense to the government.

Witness Is a Prisoner

Criminal cases. SECNAV (JAG) must be contacted for permission that normally will be granted. Failure to produce the prisoner as a witness may result in a court order requiring such production.

Civil action. The member cannot be released to appear regardless of whether it is a federal or state court making the request. A deposition may be taken at the place of confinement subject to reasonable conditions and limitations imposed by the prisoner's command.

Pretrial Interviews Concerning Matters Arising Out of Official Duties

Send requests for interviews and/or statements by parties to private litigation to the CO/OIC of the cognizant NLSO or Marine Corps SJA. These interviews are conducted in the presence of an officer designated by the CO/OIC of the NLSO or Marine Corps SJA who assures that no line of inquiry is permitted that may disclose or compromise classified information or otherwise prejudice the security interests of the United States.

Release of Official Information for Litigation Purposes and Testimony by Department of the Navy Personnel

SECNAVINST 5820.8 provides that DON personnel will not provide official information, testimony, or documents; submit to interviews; or permit a view or visit for use in federal courts, state courts, foreign courts, and other governmental proceedings without proper authorization. Additionally, DON personnel will not provide, with or without compensation, opinion or expert testimony concerning DOD information, subjects, personnel, or activities—except on behalf of the United States or a party represented by the Department of Justice—or with written special authorization. The previous instruction outlines determining authorities, the required contents of a proper request by a requester, and consideration in granting or denying a request for official information.

JURY DUTY

Active duty service members are exempted from service on federal juries. Service members are exempt from jury duty when it unreasonably interferes with

the performance of their military duties or adversely affects the readiness of a unit, command, or activity. It is the responsibility of COs to make the decision and the decision is final. All personnel assigned to the Operating Forces, in a training status, or stationed outside the United States are exempt from serving on a state or local jury. Service members who serve on state and local juries will not be charged leave or lose any pay entitlements during the period of service. All fees accrued to members for jury service are payable to the U.S. Treasury. Members are entitled to any reimbursement from the state or local jury authority for expenses incurred in the performance of jury duty (such as for transportation, costs of parking fees). COs are responsible for notifying the responsible state or local official of this exemption when a service member is summoned.

SUMMARY

As you can readily see there are many variables involved in processing and preparing documents for the delivery of military personnel to civil authorities when a request has been received from state, federal, territory, or commonwealth authorities. Additionally, you can see where you will be required to be familiar with the procedures required for waiver of extradition and the reports required when delivery is refused.

As in all other aspects of your duties as an LN, you should exercise care in preparing those documents required for the delivery of personnel and waivers of extradition. If you are in doubt as to what the proper procedures are for a particular case, you should consult the appropriate sections of the JAGMAN and, if reasonably available, a judge advocate of either the Navy or Marine Corps.

